

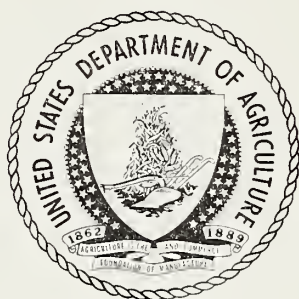
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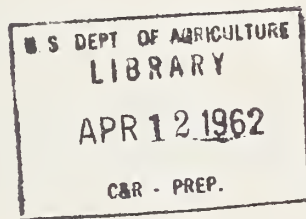
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FACT SHEET

SELF-HELP STABILIZATION PROGRAMS

With Use Of

MARKETING AGREEMENTS AND ORDERS



UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

October 1961

This fact sheet discusses how self-help stabilization programs may be carried out through the use of marketing agreements and orders.

It outlines provisions of enabling legislation, discusses the general intent and purpose of the programs, and describes measures which may be applied under the legislation authorizing marketing agreement and order use.

SELF-HELP STABILIZATION PROGRAMS

(Marketing Agreements and Orders)

LEGISLATIVE BACKGROUND

Federal legislation authorizing the use of agreements and licenses for regulating the handling of (1) milk and dairy products, and (2) specialty crops, particularly fruits, vegetables and nuts, originated in the Agricultural Adjustment Act of 1933. Amendments to the act in 1935, and passage of the Agricultural Marketing Agreement Act of 1937, clarified program use and procedures, defined types of control to be used, substituted orders for licenses, and specifically listed the commodities to be included in the programs.^{1/}

The Agricultural Act of 1961 (Public Law 87-128, approved August 8, 1961) extends the programs by making eligible for inclusion any agricultural commodity not specifically excluded in the Act, and authorizes the Secretary of Agriculture to consult with farmers, farm organizations and handlers on possible need for additional program legislation. The Act opens the way to wider use of self-help stabilization programs and reflects the desire of the administration and the intent of Congress to give farmers the legal tools needed to take an active role in reducing the cost of farm programs and in preventing the accumulation of surpluses.

ROLE OF SELF-HELP PROGRAMS

The self-help programs are designed to establish and maintain orderly market conditions for commodities moving in or affecting interstate and foreign commerce at fair prices to the consumer, and with equitable return to the producer and handler. Their purpose is to give to the farmer some of the marketing advantages long enjoyed by industry.

The programs differ from other agricultural adjustment measures in that they combine voluntary and regulatory control, initiated, set up and directed by the industry. Each industry bears the costs of administering the program. The programs also demand aggressive group participation in their operation and development, with resultant interest and emphasis placed upon furthering agricultural private enterprise.

^{1/} An Amendment in 1947 authorized the establishment of minimum standards of quality and maturity for commodities other than milk. The Agricultural Act of 1954 authorized fixing the size, capacity, weight, dimensions, or pack of containers used in packaging crop commodities. The Act also authorized program use of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of any eligible commodity other than milk.

The self-help programs differ from others, too, in that the enabling legislation imposes no control over the marketing of any commodity. Neither does it provide that any control will necessarily be established. It is enabling legislation only. The programs are initiated for specified commodities by growers and handlers. After a request is made to the Secretary of Agriculture by the industry, and after studies show that the proposed step permitted by the enabling law is practical, and is of benefit both to the industry and to the consumer, the Secretary initiates proceedings, including a formal hearing, for the issuance of an order. The part played by government is that required to protect the interest of individuals and the general public.

The most important departure in the 1961 Act from preceding legislation is the Section (8c(2)) which expands the statute to include any agricultural commodity other than those particularly excluded in the provision (see list at end). Prior legislation had limited eligible commodities to those specifically listed in the statute. The orders can be applied on a regional or a nationwide basis.

MARKETING AGREEMENTS AND ORDERS DEFINED

A Marketing Agreement is voluntary. It is a contract entered into by the Secretary of Agriculture with handlers of a particular commodity, including producers so engaged. It is binding only on those who sign it. Legislation provides that the agreements are not in violation of the anti-trust laws. A marketing agreement alone is seldom effective.

A Marketing Order is mandatory. It is issued by the Secretary of Agriculture and is binding on all handlers of the commodity concerned in the specified production or marketing area, regardless of whether they have signed an agreement. An order may be issued for a commodity only if at least two-thirds of the producers, or those who produce two-thirds of the volume, approve the order by referendum. A two-thirds majority means two-thirds of those voting in the referendum, and not two-thirds of all growers in the industry. Handlers of at least one-half the volume must have signed an agreement to have it made effective with an order. However, an order may be issued by the Secretary when he finds it is the only practicable way to carry out the objectives of the Act -- even though the necessary number of handlers have not signed.

There are no milk marketing agreements in effect at the present time. Most vegetable and fruit orders are accompanied by marketing agreements. Many fruit and vegetable cooperatives serve as handlers and therefore are important signers of the agreements.

GENERAL DIVISION OF PROGRAMS

Marketing agreement and order programs were originally set up for the two general types of commodities (milk and other commodity crops) because of the great difference in marketing problems of the industries.

Fluid milk, a highly perishable commodity, must be delivered to the consumer at a relatively constant rate. Also, milk is usually shipped by producers to one consuming market. Other commodity crop producers, however, are normally concentrated in areas favorable to the production of their commodity, and ship their products to many scattered consuming markets.

There are also differences in the number of buyers for each type of commodity. A relatively few organizations buy and distribute the bulk of the fluid milk in most markets. There are many buyers of most other commodities, and the commodities are shipped to widely scattered markets.

The approach to protection of farmer income and market supply varies for the two general commodity types.

In the case of milk, regulations involve (1) classification according to use and (2) fixing of minimum prices handlers must pay to producers for the various uses. Prices of milk for fluid distribution are set at a higher level than prices for other uses.

Regulations for other commodities approach the problem of producers' prices indirectly. Quantity, quality, and rate and method of shipment to market are controlled, and prices received by producers are indirectly affected.

Three main types of regulations have been used in the general crop programs -- those of volume control, regulation of grade and size, and surplus management.

STARTING, AMENDING, AND TERMINATING PROGRAMS

Following are the steps usually taken in setting up a self-help program for any commodity for which marketing orders are authorized:

1. A proposed agreement and order program is formulated by industry groups. The Secretary of Agriculture also has authority to initiate a program.

2. The proposed program, together with a request for a public hearing, is submitted to the Secretary. The Secretary does not plan or outline a program -- this originates and is planned by the commodity group concerned.

3. After due notice (not less than 15 days after date of publication of hearing notice in the Federal Register) the hearing (or series of hearings, as necessary) is held. Interested parties may enter evidence. They also may file written briefs or arguments, and proposed findings or conclusions, after the close of the hearings.

4. A recommended decision, with terms of the program set forth as supported by evidence presented at the hearing, is prepared and published by the Department of Agriculture.

5. Interested parties may file exceptions to the decision.

6. A final decision is issued by the Secretary.

7. The proposed marketing agreement is submitted for execution by handlers, and the regulatory program is submitted to producers for approval through a referendum.

8. Handlers of not less than 50 per cent of the volume of the commodity must sign the agreement (for California citrus fruit the percentage is 80). Voting in referendum, producers accept the program when two-thirds approve, or

when those producing two-thirds of the commodity in terms of volume approve. (Orders for California citrus fruits and individual handler pools in milk orders require approval by three-fourths of the affected producers.)

9. After required approval, the Secretary may then make the marketing order effective. The Secretary may issue an order even if the required proportion of handlers fails to sign the agreement, if it is the only practicable means of advancing the interests of producers, if it has received the necessary producer approval, and if he finds refusal or failure of the handlers to sign tends to prevent accomplishing the declared policy of Congress.

10. An order becomes effective 30 days after its publication in the Federal Register, unless the Secretary sets an earlier date.

11. Handlers who feel that the order or any provision of it, is not lawful may file a petition with the Secretary requesting that the order be modified or that they be exempted from its provisions. After a hearing, the Secretary makes a decision which, if not accepted by the handler, may be appealed (within 20 days) to a District Court of the United States for review.

The procedure for amending orders is much the same as for instituting an order, but less time (3 days) for notice of hearing may be involved.

Whether or not a program is established depends primarily upon its feasibility as presented and supported in public hearing. It is upon the evidence submitted and entered into the record that the Secretary makes his decision. The proposed program must apply to the problems of the industry, offer a well-founded plan for market stabilization, protect the income of producers and protect the consumer. Careful and full presentation of all facts is necessary.

A marketing order, or any provisions of an order, must be terminated whenever the Secretary of Agriculture finds it no longer tends to achieve the declared policy of the enacting legislation. An order must be terminated by the Secretary at the end of a current marketing period, whenever more than half the producers, who produced during the representative period more than half the volume of the commodity, request a termination.

(For complete reference, Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Orders, were published in the Federal Register on June 28, 1960, 25 F. R. 5907.)

REGULATORY PROVISIONS IN PROGRAMS

Marketing agreement and order programs may be set up on a nationwide basis, unless expressly limited to specific areas by legislation, if substantiated by findings by the Secretary of Agriculture.

Crop commodity marketing orders must provide for one or more of the following:

(1) specifying grades, size, quality, or maturity of the commodity that handlers may ship to market;

(2) allotting the amount which each handler may purchase or handle on behalf of any and all producers;

(3) establishing the quantity of the commodity that may be shipped to market during any specified period, the total quantity being allocated among all handlers under a uniform rule on the basis of past performance, or the proportionate amount of the commodity the handler has available for current shipment;

(4) establishing methods for determining the extent of any surplus, for control and disposition of the surplus, and for equalizing the burden of surplus elimination among producers and handlers;

(5) establishing a reserve pool of the product, and equitable distribution to all financially interested parties of returns derived from the sale of the pool;

(6) inspecting the commodity;

(7) fixing of the size, capacity, weight, dimensions or pack of the container used in handling of the commodity.

Marketing orders also must contain provisions to achieve one or more of the following:

(1) to prohibit unfair methods of competition and unfair trade practices in the handling of the commodity;

(2) to require handlers other than fluid milk and cream to file their selling prices, and to sell at prices now lower than those filed -- (handlers may change their prices at any time, but adequate notice must be given);

(3) to provide for the selection by the Secretary of Agriculture of an agency with the power to administer the order. Marketing orders for milk have provided for a Federal Milk Market Administrator, who is appointed by the Secretary.

In addition, a marketing order for crops may contain provisions to establish marketing research and development projects designed to assist, improve or promote the marketing, distribution and consumption of the commodity or product.

ADMINISTRATION OF CROP PROGRAMS

Administration of programs for commodities other than milk is handled by a board of producers, or of producers and handlers, selected by the Secretary of Agriculture. Members may represent both producers and handlers and are selected from a slate recommended to the Secretary by the groups concerned. The Boards carry out regulations as issued by the Secretary.

Boards make administrative rules, investigate, and report to the Secretary complaints of violations and recommend amendments.

Boards are required to keep books; make audits; analyze growing and marketing conditions; give notice of meetings; and make recommendations to the Secretary as to regulations and policies under the order. The Secretary supervises administration of orders by Boards, and their actions are subject to his approval.

Boards are authorized to employ necessary staffs to carry out their responsibilities in administration of orders.

The expenses of the Board, as set forth in budgets and as approved by the Secretary, are defrayed by assessments on the industry according to provisions of the order. Generally, excess funds are either credited to handlers' accounts against future operations, or returned to handlers at the end of each marketing season upon request.^{2/}

FOREIGN IMPORT RESTRICTIONS

Whenever the grade, size, quality, or maturity of the following commodities produced in the United States is regulated by an order, the importation of any such commodity is prohibited unless the imported commodity complies with the same or comparable restrictions: tomatoes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates and eggplants.

MILK MARKETING ORDERS

The purpose of milk marketing orders is to insure orderly marketing and stable prices to producers for their milk, and to assure that an ample supply of wholesome milk is available to consumers at all times.

General procedure as to hearings for establishing an order follows that described for crop orders.

The basic framework of each milk order, however, includes the fixing of minimum prices which must be paid to producers according to the use for which the milk is sold, a plan for equalizing prices to producers, and provisions relating to the administration of the order provisions.

Each order also provides for a Federal Milk Market Administrator, appointed by the Secretary of Agriculture, to administer the program. His principal duty is to make certain that handlers account accurately for their milk receipts and make payments to producers in accordance with the terms and provisions of the order. He may be responsible for more than one marketing area.

The Market Administrator's staff investigates the handler's business and audits his records to be certain that the required minimum prices are paid to producers.

^{2/} Activities of boards are further governed by requirements of the Administrative Procedure Act; regulations of the U. S. Department of Agriculture as published in the Code of Federal Regulations, and bylaws of the board.

Milk orders do not control production, nor do they restrict the marketing of milk by farmers.

The marketing area is defined in each order. All handlers who sell milk within the marketing area are regulated by the order and are required to pay the prescribed minimum prices to producers for all milk produced for the marketing area.

There are two methods of distributing returns to farmers for milk delivered to handlers under the system of classified prices:

1. In a marketwide pool, the announced price paid to producers is uniform for all producers of milk sold in that market, inasmuch as it represents a blend of the combined class values of all the milk produced for the marketing area by all producers.

2. In individual-handler pools, prices received by all producers delivering milk to any one handler are uniform, but they may differ from prices received by producers delivering milk to other handlers, depending upon differences in the utilization of milk by the various handlers.

Base-rating plans have been used in some markets. A producer receives one price for a certain part of his milk and a lower price for milk produced in excess of this base amount. The base amount for an individual producer is usually determined in accordance with his deliveries during the season of low production for the market as a whole.

OTHER LEGISLATIVE PROVISIONS

1. No marketing order or agreement can prohibit, regulate or restrict the advertising of any commodity or product covered by its provisions.

2. No order can regulate a producer in his capacity as a producer.

3. State and local committees, or an association of producers, may be established by the Secretary of Agriculture to aid in the more effective administration of his functions.

4. The Secretary of Agriculture permits cooperative associations of producers to vote for their members as a unit on acceptance or rejection of an order, and to act as agents to distribute payments.

5. The Secretary of Agriculture may continue provisions of an order for the remainder of any marketing season or marketing year even if prices received by producers exceed parity if the order originated during that period, to avoid a disruption of the orderly marketing of that commodity.

PENALTIES FOR PROGRAM VIOLATION

Three types of action may be taken by the Department of Justice against violators of marketing orders:

1. Civil action to obtain judgment for accrued obligations and to require compliance by injunction. This action helps to prevent further violation of the order.

2. Civil action for exceeding handler quotas. If the prosecution is successful, the offender is required to pay a sum equal to current market value of the commodity shipped in excess of a quota or allotment.

3. Criminal action. If convicted of making false representations or other illegal acts in connection with a marketing program, the offender may be fined not less than \$50 nor more than \$500 for each violation. Each day the violation continues may be considered a separate violation.

The Department of Justice may also institute criminal action in appropriate cases under a statute pertaining to frauds against, or the furnishing of false information to, the United States, and criminal or civil contempt action for contempt incident to violation of injunctions.

COMMODITY LISTS

Fruits, Vegetables and Nut Program

There are marketing agreements and orders in effect for fruits, vegetables and nuts, as of September 1, 1961, in the following areas:

Citrus fruits -- Grapefruit (Arizona and California); Lemons (California and Arizona); Limes (Florida); Oranges, Grapefruit, Tangerines and Tangelos (Florida); Oranges and Grapefruit (Texas); Navel Oranges (Arizona and California) and Valencia Oranges (Arizona and California).

Other fruits -- Apricots (Washington); Avocados (Florida); Cherries (Washington); Dates (California); Grapes for Crushing (California); Tokay Grapes (California); Nectarines (California); Peaches (Colorado, Georgia, Utah, and Washington); Bartlett Pears, Plums, and Elberta Peaches (California); Winter Pears (Oregon, Washington, and California); Dried Plums (California); Fresh Prunes (Idaho-Oregon, and Washington-Oregon) and Raisins (California).

Potatoes -- Colorado; Idaho and Oregon; Maine; Massachusetts; Rhode Island; Connecticut; New Hampshire; and Vermont; Oregon and California; Red River Valley; Eastern South Dakota; Southeastern States; Washington.

Vegetables -- Carrots (Texas); Cucumbers (Florida); Lettuce (Texas); Onions (Idaho-Oregon, Texas); Peas and Cauliflower (Colorado); Tomatoes (Florida and Texas).

Tree Nuts -- Almonds (California); Filberts (Oregon and Washington); Walnuts (California, Oregon, and Washington).

OTHER PROGRAMS

Anti-hog-cholera serum and hog cholera virus.

EXCLUDED COMMODITIES

Commodities excluded in the 1961 Act from marketing orders and agreements were:

honey	sugarcane
cotton	sugarbeets
rice	wool
wheat	mohair
corn	livestock
grain sorghums	soybeans
oats	flaxseed
barley	poultry (but turkeys excepted)
rye	eggs (but turkey hatching eggs excepted)

fruits and vegetables for canning or freezing, excepting olives, grapefruit, cherries and cranberries.

apples excluded in all states but Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts and Connecticut.

apples for canning and freezing permitted in above states, excepting Washington, Oregon and Idaho.

FEDERAL MILK MARKETING ORDERS IN EFFECT OCT. 1, 1961

Appalachian	North Central Iowa
Austin-Waco	North Central Ohio
Black Hills	Northeastern Ohio
Boston	Northeastern Wisconsin
Cedar Rapids-Iowa City	Northern Louisiana
Central Arizona	North Texas
Central Arkansas	Ohio Valley
Central Mississippi	Oklahoma Metropolitan
Central West Texas	Omaha-Lincoln-Council Bluffs
Chattanooga	Ozarks
Chicago	Paducah
Cincinnati	Philadelphia
Clarksburg	Platte Valley
Colorado Springs-Pueblo	Puget Sound
Columbus	Quad Cities-Dubuque
Connecticut	Red River Valley
Corpus Christi	Rockford-Freeport
Dayton-Springfield	San Antonio
Des Moines	Sioux City
Duluth-Superior	Sioux Falls-Mitchell, S.D.
Eastern Colorado	South Bend-LaPorte-Elkhart
Eastern South Dakota	Southeastern Florida
Fort Smith, Arkansas	Southeastern New England
Fort Wayne, Indiana	Southern Michigan
Great Basin	Southwest Kansas
Indianapolis	Springfield, Mass.
Inland Empire	St. Joseph
Kansas City	St. Louis
Knoxville	Suburban St. Louis
Louisville-Lexington	Texas Panhandle
Memphis	Toledo
Michigan Upper Peninsula	Tri-State
Milwaukee	Upper Chesapeake Bay
Minneapolis-St. Paul	Upstate Michigan
Mississippi Delta	Washington, D. C.
Mississippi Gulf Coast	Western Colorado
Muskegon	Wheeling
Nashville	Wichita
Neosho Valley	Wilmington, Delaware
New Orleans	Worcester
New York-New Jersey	Youngstown-Warren

